

TERMS AND CONDITIONS OF PURCHASE
(PROVISION OF SERVICES)

The terms set forth in our Purchase Order and the following terms and conditions are the terms and conditions that control your provision of services to us.

Definitions

The term “we”, “our” or “us” means METALX, LLC or the affiliate of METALX, LLC designated as the purchaser in the Purchase Order. The terms “you” or “your” mean the service provider designated on the Purchase Order. The term “Purchase Order” means the “Purchase Order” form completed by us to confirm or set out certain terms of the agreement between you and us for the provision of services. The term “Terms” means the terms and conditions set forth in this document. The term “Agreement” means the terms and conditions set out in the Purchase Order as supplemented by the Terms. The term “Services” means the services described in the Agreement that you will provide to us. The term “Affiliate” or “Affiliates” means any corporation, partnership, limited liability company, trust, other entity or other person, controlled by or under common control with you or us, as applicable.

Rejection of Your Terms

No terms proposed by you, whether set forth in a contract, confirmation, order, other document or other communication, will be binding on us and we hereby specifically object to and reject such terms.

Applicable Terms

If you sign the Purchase Order or otherwise agree to its terms, the Agreement will constitute the entire agreement between you and us with respect to your provision of Services and will supersede any prior agreements, written or oral, between you and us.

If the Purchase Order is a confirmation of a verbal agreement between you and us and you do not sign it or otherwise agree to its terms, your provision of Services to us will constitute your acceptance of the Agreement.

Services and Specifications

The Services may be described in the Purchase Order or a statement of work or other document attached to the Purchase Order. The Services must conform to the specifications set forth in the Agreement as supplemented by any additional specifications set forth in any documentation you provided to us; provided, however, if any additional specifications are inconsistent with those in or attached to the Purchase Order, the inconsistent additional specifications shall be disregarded. Any statement of work, other description of services or such supplemental specifications are hereby incorporated by reference.

Inspection

We may inspect the work performed by you to assure conformance to the specifications while the Services are being performed and/or within a reasonable time after the Services have been completed.

Warranties and Covenants

Any express warranties you have provided to us or promulgated generally are hereby incorporated by reference and may be enforced by us. You also warrant and agree that (i) the services will conform to the specifications; (ii) the services will be performed professionally in conformance with industry standards; and (iii) the workmanship and any goods supplied by you will be free of defects and deficiencies. If the Services fail to conform to the specifications or you have breached your other warranties to us, we may, at our option, (i) have you, at your expense, re-perform the Services; or (ii) deduct from any unpaid balance (or be entitled to a refund for) the cost of a third party service provider to remedy any nonconformance, defect or deficiency. We may also pursue all other remedies provided in this Agreement or available under applicable law.

Indemnifications and Insurance

You agree to indemnify and hold us, our Affiliates, officers, directors, employees and agents harmless for and from all suits, claims, judgments, awards, losses, damages, costs or expenses (including attorney’s fees) relating to, arising out of, or caused by (i) a breach of your representations or obligations under the Agreement; or (ii) your intentional, willful or negligent acts.

If the Services will be performed on a site we own, lease, have a license to use or otherwise control, including our customer’s site if you are performing services on our behalf at such site (each a “Covered Premises”), you must also comply with the insurance requirements and provide the additional indemnifications set forth in Exhibit A, which exhibit is hereby incorporated by reference.

All of your indemnification obligations shall survive the expiration or other termination of the Agreement.

Taxes

Unless otherwise stated in the Agreement, the service fees are inclusive of all taxes and other governmental fees and charges.

Cancellation and Other Remedies

We may cancel the Agreement in whole or in part if you fail to begin performing the Services by any specified start date or fail to complete the Services by any specified completion date. We may also cancel this Agreement in whole in part if you breach any representation, warranty or covenant, breach any other terms of the Agreement, you make an assignment for the benefit of creditors, a receiver is appointed for you, you become insolvent, or you file for bankruptcy or are subject to a proceeding for involuntary bankruptcy. All remedies provided in the Agreement are in addition to, and not in lieu of, any additional remedies available to us under applicable law. We may exercise any of the other rights or remedies available to us. We may recover our reasonable attorney’s fees and other litigation expenses if we prevail in any action to enforce the Agreement.

Termination for Convenience

Unless this Agreement is designated as “Not Terminable for Convenience” in the Purchase Order, we may terminate this Agreement at our convenience for any or no reason prior to the completion date or, if none is specified, the completion of the Services. Any such termination shall be effective as of the date specified in a written notice of termination we provide to you. If we terminate this Agreement for convenience, we will pay you for Services properly performed prior to the effective date of termination. If you have not provided any Services prior to our termination for convenience, we will pay you a termination fee of \$250.00.

Limitation on Damages

If we breach the Agreement, we will not, in any event, be liable for any consequential, incidental or indirect damages incurred by you. In no event will we or you be liable for punitive damages.

Intellectual Property

We will have sole and exclusive rights to any intellectual property developed by you as a result of or in connection with the performance of Services, including, but not limited to, inventions, programs, code, software, methods, processes, works of authorship, techniques or processes, or trade secrets (“Intellectual Property”). Any Intellectual Property covered by applicable copyright laws shall be deemed a work for hire and the ownership thereof shall automatically vest in us. For all other Intellectual Property, you hereby assign all of your ownership rights, including any patent rights, in said Intellectual Property to us and shall execute and deliver, and cause any affiliates, employees, agents or subcontractors to execute and deliver, an assignment of their ownership rights to us.

Excusable Delays

You will not be liable for any failure or delay in performance attributable to any cause beyond your reasonable control if, within two (2) days of learning of such cause, you provide written notice to us. If the cause relates to one of your suppliers or subcontractors, then such failure or delay will not be excusable unless the goods or services to be provided by such supplier or subcontractors are not obtainable by you from another source. In the event of an excusable delay, you agree to make your best efforts to comply with your contractual obligations and agree not to favor another customer over us. We may cancel all or any part of this Agreement if your performance has been delayed as a result of an excusable delay. In no event will we be liable for any failure or delay attributable to a cause beyond our reasonable control.

Assignment, Delegation and Change in Control

Any assignment of the Agreement or any of your rights under it without our prior written consent shall be null and void and shall constitute a material breach of the Agreement. You may not delegate any of your duties under this Agreement without our prior written consent. We may cancel this Agreement, in whole or in part, upon any change in control of you.

Set-Off

We may set-off any amount owed by you in connection with this Agreement against any amount owed to us or any of our Affiliates by you or any of your Affiliates.

Bribes and Kick-backs

You represent and agree that neither you nor any of your agents or employees have offered or will offer, or have given or will give anything of significant value to our employees or representatives for the purpose of obtaining the Agreement or favorable treatment under the Agreement.

Compliance with Laws

You agree to comply with all applicable local, state and federal laws, rules and regulations in conducting your business and performing your obligations under the Agreement.

Amendments and Waivers

No amendment, modification, change order, waiver or release of any provisions of the Agreement will be binding on us without a writing signed by our authorized representative. Our failure in any one or more instances to require the performance of any term or condition in the Agreement shall not act as a waiver of our right to insist on strict performance in the future.

Severability

If any provision of the Agreement is determined to be invalid, illegal or unenforceable, such determination shall not render the other provisions of the Agreement invalid, illegal or unenforceable.

Applicable Law and Forum.

The Agreement shall be deemed to have been made in Indiana and shall be governed by the laws of Indiana, without regard to its choice of laws provisions. Any lawsuit or other proceeding initiated by you relating in any way to the Agreement or the transactions contemplated thereunder must be brought in the DeKalb County, Indiana Circuit or Superior Court or the United States District Court for the Northern District of Indiana, Fort Wayne Division. If we initiate a lawsuit or other proceeding against you, you consent to the jurisdiction of any of the foregoing courts, waive any venue objections and agree not to seek any transfer of the lawsuit or proceeding to another court. You agree to pay the reasonable attorney’s fees incurred by us in moving any action initiated by you to one of the foregoing forums.



Exhibit A
Insurance Requirements and Special Indemnification

I. Insurance

Coverage Requirements. During the period you provide services for us, you shall maintain, at a minimum, the types and amounts of insurance coverage listed below:

- (a) Workers Compensation in an amount equal to or greater than the statutory limits as required by the laws of each state where the services will be performed.
- (b) Commercial General Liability or other comparable broad form general liability coverage which includes coverage for bodily injury, property damage, advertising and personal injury, products-completed operations, and contractual liability in the minimum amount of \$1,000,000 per occurrence. We shall be listed as an additional insured by specific endorsement to the Commercial General Liability Policy. Such insurance coverage for the additional insured shall be on a primary and non-contributory basis.
- (c) Automobile Liability in the minimum amount of \$1,000,000 combined single limit, if Vendor owns motor vehicle(s) and the operation of its business involves the use of such motor vehicle(s).
- (d) Excess Liability in the minimum amount of \$1,000,000 for each occurrence.

You may meet the above-listed insurance requirements through separate, combination, or a package policies if those policies meet the required limits and the required scope of coverage. All policies shall provide that they may not be cancelled or materially altered without first providing us thirty (30) days prior written notice.

Proof of Insurance. Upon your execution of the Agreement, and thereafter no less frequently than annually so long as you continue performing services for us, you shall provide us with proof of all the foregoing types and amounts of insurance by means of an authorized broker's or producer's Certificate of Insurance indicating the required coverages.

Insurance Providers. Insurance coverage shall be procured from companies earning a minimum rating of A-X in Best's Reports.

Waiver of Subrogation. All of the liability policies of insurance shall provide that the insurance companies will have no right of recovery or subrogation, whether by loan receipt, equitable assignment, express or implied or otherwise, against us.

Subcontractors. Subcontractors hired by you for the purpose of providing work on or for any Covered Premises shall be subject to all of the above insurance requirements and terms applicable to you, including, but not limited to, the provision that we are to be named as additional insured on all policies. You will not permit any such subcontractors to perform any services for or on any Covered Premises until first providing proof of insurance in the form of an authorized broker's or producer's Certificate of Insurance indicating the required coverages.

II. Indemnification and Lien Releases

Additional Indemnifications. You agree to indemnify, hold harmless, and defend us, and our managers, officers, directors, members, employees, agents, consultants and customers (the "Indemnified Parties"), from and against any and all claims, losses, damages and expenses (including but not limited to attorneys' fees and legal expenses) ("Claims") for (i) bodily injury, including death and/or property damage incurred by us or any third party, including our employees and agents, arising or purportedly arising from your acts and/or omissions, or the acts and/or omissions of your direct and indirect suppliers and contractors, in whole or in part; (ii) for amounts due or to become due for goods or services provided to you by your direct and indirect suppliers and subcontractors; and (iii) bodily injury, including death and/or property damage incurred by you, or your direct and indirect subcontractors and/or your and their employees and agents while on a Covered Premise, whether or not such injury, death or property damage was or is alleged to have been caused, in whole or in part, by our negligence.

Indemnification Procedures. If any claims covered by your indemnity are brought against an Indemnified Party, you agree to assume the defense thereof, using attorneys reasonably acceptable to us, and defend the same at your expense and to pay any and all costs, charges, attorney's fees, and other expenses, and any and all judgments and settlements that may be incurred by or obtained against an Indemnified Party in such suits or other proceedings. The Indemnified Party may, at its expense, participate in such defense.

Liens. You agree not to file or otherwise assert a lien on or against a Covered Premise. If a mechanic's lien or other lien is placed upon any Covered Premises by any of your direct or indirect suppliers or subcontractors, you shall immediately cause the same to be released, or discharged by giving bond or otherwise satisfying the lien.

In witness whereof, the parties have signed this agreement on date first above written.

 ("Vendor")
 By: _____
 (Signature)

MetalX LLC

By: _____
 (Signature)

(Printed Name and Title)

(Printed Name and Title)